



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2018-0569; FRL-9993-25-Region 5]

Air Plan Approval; Wisconsin; Nonattainment New Source Review

Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving, as a State Implementation Plan (SIP) revision, Wisconsin's certification that its SIP satisfies the nonattainment new source review (NNSR) requirements of the Clean Air Act (CAA) for the 2008 ozone National Ambient Air Quality Standard (NAAQS). The State's submittal is in response to EPA's February 3 and December 11, 2017, Findings of Failure to Submit (FFS) final rule, which found that Wisconsin failed to satisfy CAA requirements for implementation of the 2008 ozone NAAQS in nonattainment areas.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2018-0569. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available,

i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Rachel Rineheart, Environmental Engineer, at (312) 886-7017 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Rachel Rineheart, Environmental Engineer, Air Permits Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-7017, Rineheart.rachel@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background

II. What Action is EPA Taking?

III. Statutory and Executive Order Reviews.

I. Background

A. Background on the 2008 Ozone Standard

On March 27, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm).¹ Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standard. For the ozone NAAQS, this also involves classifying any nonattainment areas at the time of designation.² Ozone nonattainment areas are classified based on the severity of their ozone levels (as determined based on the area's "design value," which represents air quality in the area for the most recent 3 years). The classifications for ozone nonattainment areas are marginal, moderate, serious, severe, and extreme.³

Areas that EPA designates nonattainment for the ozone NAAQS are subject to the general nonattainment area planning requirements of CAA section 172 and also to the ozone-specific planning requirements of CAA section 182. Ozone nonattainment areas in the lower classification levels have fewer and/or less stringent mandatory air quality planning and control requirements than those in higher classifications. For marginal areas, a state is required to submit a baseline emissions inventory, adopt provisions into the SIP requiring emissions

¹73 FR 16436.

²CAA sections 107(d)(1) and 181(a)(1).

³CAA section 181(a)(1).

statements from stationary sources, and implement a NNSR program for the relevant ozone NAAQS.⁴ For moderate areas, a state needs to comply with the marginal area requirements, plus additional moderate area requirements, including the requirement to submit a modeled demonstration that the area will attain the NAAQS as expeditiously as practicable but no later than 6 years after designation, the requirement to submit a reasonable further progress (RFP) plan, the requirement to adopt and implement certain emissions controls, such as Reasonably Available Control Technology and Vehicle Emissions Inspection and Maintenance, and the requirement for greater emissions offsets for new or modified major stationary sources under the state's NNSR program.⁵

B. Background on the Wisconsin Ozone Nonattainment Areas

On June 11, 2012,⁶ EPA designated the Chicago area as a marginal nonattainment area for the 2008 ozone NAAQS. The Chicago area includes Cook, DuPage, Kane, Lake, McHenry, and Will Counties and part of Grundy and Kendall Counties in Illinois; Lake and Porter Counties in Indiana; and part of Kenosha County in Wisconsin. On May 4, 2016,⁷ pursuant to section 181(b)(2) of the CAA, EPA determined that the Chicago

⁴CAA section 182(a).

⁵CAA section 182(b).

⁶77 FR 34221, effective July 20, 2012.

⁷81 FR 26697.

area failed to attain the 2008 ozone NAAQS by the July 20, 2015 marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas. Pleasant Prairie and Somers townships in Kenosha County are part of the Chicago area nonattainment area. The remainder of Kenosha County is designated as unclassifiable/attainment.

On May 21, 2012,⁸ EPA designated Sheboygan County in Wisconsin as a marginal nonattainment area for the 2008 ozone NAAQS. On December 19, 2016,⁹ pursuant to section 181(b) of the CAA, EPA determined that Sheboygan County failed to attain the 2008 ozone NAAQS by the July 20, 2016 marginal area attainment deadline and thus reclassified the area from marginal to moderate nonattainment. In that action, EPA established January 1, 2017, as the due date for all moderate area nonattainment plan SIP requirements applicable to newly reclassified areas. Effective March 6, 2017, EPA found that 15 states and the District of Columbia failed to submit SIP revisions in a timely manner to satisfy certain requirements for the 2008 ozone

⁸77 FR 30088 (May 21, 2012).

⁹81 FR 91841 (December 19, 2016).

NAAQS.¹⁰ This finding established certain deadlines for the imposition of sanctions if a state does not submit a timely SIP revision addressing the requirements for which the finding was made and for EPA to promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements. As part of that action, EPA made a finding that Wisconsin failed to submit a marginal NNSR SIP for the Wisconsin portion of the Chicago area and for Sheboygan County.

C. Wisconsin's Submittal

On July 19, 2018, Wisconsin submitted a SIP revision requesting EPA approve Wisconsin's certification that its existing SIP-approved NNSR regulations fully satisfy the NNSR requirements set forth in 40 CFR 51.165 for both marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS. EPA proposed to approve Wisconsin's certification on February 12, 2019, with a comment period ending on March 14, 2019 (84 FR 3376). No comments were received during the comment period.

II. What Action is EPA Taking?

EPA is approving Wisconsin's July 18, 2018, SIP revision addressing the NNSR requirements for the 2008 ozone NAAQS for the Wisconsin portion of the Chicago Nonattainment Area and for Sheboygan County. EPA has concluded that Wisconsin's submission fulfills the 40 CFR 51.1114 revision requirement, meets the

¹⁰82 FR 9158 (February 3, 2017).

requirements of CAA sections 110 and 172 and the minimum SIP requirements of 40 CFR 51.165. Approval of the NNSR requirements addresses EPA's finding that Wisconsin failed to submit moderate ozone NNSR requirements and EPA's approval turns off the sanctions and FIP clock.

III. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally

permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court

of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 24, 2019.

Cheryl L. Newton,
Acting Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2585 is amended by adding paragraph (hh) to read as follows:

§ 52.2585 Control strategy: Ozone.

* * * * *

(hh) Approval—On July 19, 2018, Wisconsin submitted a SIP revision certifying that the existing SIP-approved nonattainment new source review regulations fully satisfy the nonattainment new source review requirements for marginal and moderate ozone nonattainment areas for the 2008 ozone NAAQS.

[FR Doc. 2019-09110 Filed: 5/2/2019 8:45 am; Publication Date: 5/3/2019]